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EXAMINER

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UNITED STATES PATENT AND TRADEMARK OFFICE

**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Ex parte THEODORE DAVIDOV and KENNETH A. DAVIDOV

Appeal 2007-3502
Application 09/924,471
Technology Center 3700

Decided: January 15, 2008

Before TONI R. SCHEINER, DEMETRA J. MILLS, and ERIC GRIMES,
Administrative Patent Judges.

GRIMES, *Administrative Patent Judge.*

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134 involving claims to a lid having an integral one-piece eating utensil. The Examiner has rejected the claims as obvious. We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

BACKGROUND

“[M]any food containers incorporate covers or lids having an eating utensil contained in, or attached to the cover or lid. Such eating utensils have typically comprised multiple portions, such as separate utensils and

handles, which must be removed from the cover or lid and which then must be subsequently assembled to enable the user to properly use the utensil” (Specification 1). These “multiple-piece eating utensils have increased the manufacturing costs and complexity of the container lids or covers and, generally, the mechanisms by which the multiple pieces are attached together have proven to be insufficiently strong to enable the user to readily consume the food product, or have proven to be too complex for a user to readily comprehend” (*id.* at 1-2).

The Specification discloses “a lid having an integral, one-piece eating utensil that is easily removable from the lid and which possesses the requisite rigidity to enable the utensil to be used without deformation or breakage” (*id.* at 4).

DISCUSSION

1. CLAIMS

Claims 1, 2, and 4-8 are pending and on appeal. Claims 1 and 5 are representative and read as follows:

Claim 1. A lid configured to be mounted on a food container having a rim bounding an opening of the food container, the lid comprising:

a) a top cover wall having a generally planar configuration, the top cover wall having a single opening therethrough and an outer periphery;

b) a one-piece eating utensil located in the opening of the top cover wall,

the one-piece utensil having a food engaging portion of substantially uniform thickness and an integral handle portion extending therefrom,

the handle portion being configured to be gripped by a hand of a user,
the one-piece eating utensil being removably connected to the top cover wall solely by a plurality of discrete, spaced apart, frangible connecting elements,

a length of the one-piece eating utensil from an end of the food engaging portion to an end of the handle portion being less than a distance between opposite sides of the periphery of the top cover wall; and,

c) a side wall extending downwardly from the periphery of the top cover wall and configured to engage the rim of the food container,

the side wall including first and second wall portions wherein the second wall portion of one lid is configured to accept therein the first wall portion of another lid so as to enable a plurality of lids to be stacked in nested fashion.

Claim 5: The lid of claim 1 wherein the food engaging portion comprises a fork.

2. OBVIOUSNESS I

Claims 1, 2, 4, 7 and 8 stand rejected under 35 U.S.C. § 103 as obvious in view of Heidorn¹ and Schoenmakers.² Claims 2, 4, 7 and 8 have not been argued separately and therefore stand or fall with claim 1. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner relies on Heidorn as disclosing a lid meeting all of the limitations of instant claim 1 except that “Heidorn does not teach a one-piece eating utensil within a single opening through the lid cover wall” (Answer 3). The Examiner relies on Schoenmakers as disclosing a lid containing a one-piece eating utensil (*id.*). The Examiner concludes that “it would have been obvious to one of ordinary skill in the art at the time the invention was made to eliminate the secondary handle extension ... and form a one-piece eating utensil as taught by Schoenmakers” (*id.*). The

¹ Heidorn, DE 200 00 079, May 4, 2000. Our citations to Heidorn are to the English translation of record when citing text, and to the German document when citing figures.

² Schoenmakers, WO 95/07487, Mar. 23, 1995.

Examiner reasons that such a modification “would have been an obvious matter of design choice to save on manufacturing costs” (*id.*).

We conclude that the Examiner has set forth a *prima facie* case that claim 1 would have been obvious to the ordinary artisan. Heidorn discloses a lid with an integral two-piece spoon to be pressed out (Heidorn 2 and Fig. 1). Heidorn also discloses that the lid has a side wall, extending downward from the periphery of the top cover wall and configured to engage the rim of the food container (*id.* at Fig. 5). The embodiment shown in Heidorn’s Fig. 5 also reasonably appears to include a side wall having first and second wall portions configured to enable a plurality of lids to be stacked in a nested fashion (*id.*).

Schoenmakers discloses a lid comprising a one-piece eating utensil (Fig. 1; p. 5, ll. 27-29). Schoenmakers also discloses that, in one aspect, “the implement is formed integrally with the cover portion and is at least partly defined by a frangible web or line of weakness in the cover portion which may be broken to separate the implement from the cover portion” (*id.* at 1-2).

We agree with the Examiner that it would have been *prima facie* obvious to one of skill in the art to combine the teachings of Heidorn and Schoenmakers and thereby arrive at the lid defined by claim 1. Heidorn discloses a container lid with an integral, two-piece eating utensil, while Schoenmakers discloses a lid with an integral, one-piece eating utensil. It would have been obvious to one of skill in the art at the time the invention was made to substitute the one-piece eating utensil disclosed by

Schoenmakers for the two-piece utensil disclosed by Heidorn because a one-piece utensil would be simpler to use.

Appellants argue that Heidorn does not disclose the instantly claimed feature of a lid having a side wall having “first and second wall portions wherein the second wall portion of one lid is configured to accept therein the first wall portion of another lid so as to enable a plurality of lids to be stacked in nested fashion” (App. Br. 5-6).

We are not persuaded by this argument. Although the stacking of lids in a nested fashion is not specifically disclosed by Heidorn, the lid structure of Heidorn, as recognized by the Examiner (Answer 6), has a first skirt and a second skirt that allows for stacking of lids in a nested fashion. Heidorn’s Fig. 5 shows a lid with an upper wall portion (first skirt) that has a smaller diameter than the lower wall portion (second skirt), allowing the lids to be stacked on each other. Thus, we agree with the Examiner that the disputed feature of the claimed invention is disclosed by Heidorn.

Appellants also argue that the references do not disclose the instantly claimed feature of a “utensil having a food engaging portion of substantially uniform thickness,” and that “Schoenmakers specifically requires the food engaging portion to be non-uniform in thickness” (Br. 7). Thus, Appellants argue, “the combination of Heidorn and Schoenmakers would inherently lead one having ordinary skill in the art away from Applicant’s claimed structure by requiring the food engaging portion of the one-piece utensil to be of non-uniform thickness” (*id.* at 7-8).

We are not persuaded by this argument. It is true that neither Heidorn or Schoenmakers expressly suggest a utensil having a food engaging portion

of substantially uniform thickness, but the prior art need not expressly suggest an invention in order to have made it obvious. “[T]he ‘motivation-suggestion-teaching’ test asks not merely what the references disclose, but whether a person of ordinary skill in the art, possessed with the understandings and knowledge reflected in the prior art, and motivated by the general problem facing the inventor, would have been led to make the combination recited in the claims.” *In re Kahn*, 441 F. 3d 977, 988 (Fed. Cir. 2006). *See also KSR Int’l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741 (2007) (The obviousness analysis “can take account of the inferences and creative steps that a person of ordinary skill in the art would employ.”); *Dystar Textilfarben GmbH & Co. Deutschland KG v. C.H. Patrick Co.*, 464 F.3d 1356, 1367 (Fed. Cir. 2006) (The “suggestion test is in actuality quite flexible and not only permits, but requires, consideration of common knowledge and common sense.”).

Schoenmakers discloses that the food support portion of the utensil may be flat but is preferably bowl shaped (Schoenmakers 3). It is true that Schoenmakers describes one embodiment in which a “strengthening rib 21 . . . runs around the perimeter of the spoon 8” and in which “the bowl portion is of dished shape having a thinner central region . . . and a thicker outer region” (*id.* at 5: 29 to 6: 7). This embodiment, however, is described as being “by way of example only” (*id.* at 4: 21) and Schoenmakers does not provide any basis for concluding that a food engaging portion of non-uniform thickness is a critical feature of the disclosed eating utensil. In addition, the disclosure cited by Appellants appears to apply only to the embodiment of Schoenmaker’s lid that includes a spoon, while

Schoenmaker also expressly suggests lids including a knife or fork (*id.* at 3: 21-22). We conclude that one of skill in the art would have considered the claimed feature of a food support portion that is of substantially uniform thickness to be obvious in view of the cited references, considered as a whole.

3. OBVIOUSNESS II

Claims 5 and 6 stand rejected under 35 U.S.C. § 103 as obvious in view of Heidorn, Schoenmakers, and Torniainen.³ Claim 6 has not been argued separately and therefore stands or falls with claim 5. 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner relies on Heidorn and Schoenmakers for the disclosures discussed above, and relies on Torniainen as disclosing “a lid having a detachable eating utensil wherein the utensil can be a spoon ... or can be a fork ... or knife” (Answer 4). The Examiner concludes that it “would have been obvious to one of ordinary skill in the art at the time the invention was made to utilize the teaching of a fork and a knife as an eating utensil removably attached in the opening of the lid of Heidorn” in order to “provide[] alternative utensils as appropriate for the food contained within the associated container” (*id.*).

We conclude that the Examiner has set forth a prima facie case that claim 5 would have been obvious to the ordinary artisan. Heidorn and Schoenmakers are discussed above. Schoenmakers also discloses that the eating utensil in the lid can be a spoon, knife or fork (Schoenmakers 3). Thus, for reasons set forth above, and in view of the explicit disclosure in Schoenmakers that the eating utensil may be a fork, we agree with the

³Torniainen et al., US 6,371,324 B1, Apr. 16, 2002

Examiner that it would have been prima facie obvious to one of skill in the art at the time the invention was made to combine the teachings of Heidorn and Schoenmakers and thereby arrive at the lid defined by claim 5. The disclosure of Torniainen is cumulative. However, we note that Torniainen also discloses a cover for a food container having an integral eating utensil (Torniainen, abstract), and that the eating utensil can be a fork or knife (Torniainen, col. 5, ll. 40-42)

Appellants do not dispute that Torniainen would have suggested a lid containing a fork but argue that the combination of the references do not cure the defect of Heidorn and Schoenmakers in failing to disclose a utensil having a food engaging portion of substantially uniform thickness (Br. at 8-9).

We do not find this argument to be persuasive. As discussed above, we find the disputed feature of a food engaging portion of substantially uniform thickness to be suggested by the combination of Heidorn and Schoenmakers. In addition, we note that Torniainen discloses in one embodiment a lid having an integral spoon that reasonably appears to have a food-engaging portion of substantially uniform thickness (Torniainen, Fig. 2C)

SUMMARY

The Examiner's rejections are supported by the preponderance of the evidence of record. We therefore affirm the rejection of claims 1, 2, and 4-8 under 35 U.S.C. § 103.

Appeal 2007-3502
Application 09/924,471

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

Ssc:

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